

E-Filed 1/13/16

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

RAJESH MANI,
Plaintiff,

v.

DR. BRIGHT,
Defendant.

No. C 15-4489 RS (PR)

ORDER OF SERVICE;

**ORDER DIRECTING DEFENDANT
TO FILE DISPOSITIVE MOTION OR
NOTICE REGARDING SUCH
MOTION;**

INSTRUCTIONS TO CLERK

INTRODUCTION

Plaintiff, a state prisoner proceeding pro se, filed this federal civil rights action under 42 U.S.C. § 1983 in which he raises Eighth Amendment medical treatment claims against Dr. Bright at Soledad State Prison. Upon review of his complaint under 28 U.S.C. § 1915A(a), the Court concludes that plaintiff has stated claims for relief. Defendant is directed to file a dispositive motion or notice regarding such motion relative to such claims on or before April 15, 2016. The Court further directs that defendant is to adhere to the notice provisions detailed in Sections 2.a and 10 of the conclusion of this order.

DISCUSSION

A. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.

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1 See 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and
 2 dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may
 3 be granted or seek monetary relief from a defendant who is immune from such relief. *See id.*
 4 § 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *See Balistreri v. Pacifica*
 5 *Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988).

6 A “complaint must contain sufficient factual matter, accepted as true, to ‘state a claim
 7 to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009)
 8 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial
 9 plausibility when the plaintiff pleads factual content that allows the court to draw the
 10 reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (quoting
 11 *Twombly*, 550 U.S. at 556). Furthermore, a court “is not required to accept legal conclusions
 12 cast in the form of factual allegations if those conclusions cannot reasonably be drawn from
 13 the facts alleged.” *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754–55 (9th Cir. 1994).
 14 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1)
 15 that a right secured by the Constitution or laws of the United States was violated, and (2)
 16 that the alleged violation was committed by a person acting under the color of state law. *See*
 17 *West v. Atkins*, 487 U.S. 42, 48 (1988).

18 **B. Legal Claims**

19 Plaintiff alleges that Dr. Bright violated his Eighth Amendment rights when he failed
 20 to remove a cyst. This alleged failure has caused plaintiff problems in walking and in
 21 performing “normal activities.” When liberally construed, plaintiff has stated a claim for
 22 relief.

23 **CONCLUSION**

24 For the foregoing reasons, the Court orders as follows:

- 25 1. The Clerk of the Court shall issue summons and the United States Marshal
 26 shall serve, without prepayment of fees, a copy of the complaint in this matter (Docket
 27 No. 1), all attachments thereto, and a copy of this order upon Dr. Bright at Soledad State
 28

1 Prison. The Clerk shall also mail courtesy copies of the complaint and this order to the
2 California Attorney General's Office.

3 2. No later than ninety (90) days from the date of this order, defendant shall file a
4 motion for summary judgment or other dispositive motion with respect to the claim(s) in the
5 complaint found to be cognizable above.

6 a. If defendant elects to file a motion to dismiss on the grounds plaintiff
7 failed to exhaust his available administrative remedies as required by 42 U.S.C. § 1997e(a),
8 defendant shall do so in a motion for summary judgment, as required by *Albino v. Baca*, 747
9 F.3d 1162 (9th Cir. 2014).

10 b. Any motion for summary judgment shall be supported by adequate
11 factual documentation and shall conform in all respects to Rule 56 of the Federal Rules of
12 Civil Procedure. Defendant is advised that summary judgment cannot be granted, nor
13 qualified immunity found, if material facts are in dispute. If any defendant is of the opinion
14 that this case cannot be resolved by summary judgment, he shall so inform the Court prior to
15 the date the summary judgment motion is due.

16 3. Plaintiff's opposition to the dispositive motion shall be filed with the Court and
17 served on defendant no later than forty-five (45) days from the date defendant's motion is
18 filed.

19 4. Defendant shall file a reply brief no later than fifteen (15) days after
20 plaintiff's opposition is filed.

21 5. The motion shall be deemed submitted as of the date the reply brief is due. No
22 hearing will be held on the motion unless the Court so orders at a later date.

23 6. All communications by the plaintiff with the Court must be served on
24 defendant, or defendant's counsel once counsel has been designated, by mailing a true copy
25 of the document to defendant or defendant's counsel.

26 7. Discovery may be taken in accordance with the Federal Rules of Civil
27 Procedure. No further court order under Federal Rule of Civil Procedure 30(a)(2) or Local
28

1 Rule 16-1 is required before the parties may conduct discovery.

2 8. It is plaintiff's responsibility to prosecute this case. Plaintiff must keep the
3 Court informed of any change of address and must comply with the Court's orders in a
4 timely fashion. Failure to do so may result in the dismissal of this action for failure to
5 prosecute pursuant to Federal Rule of Civil Procedure 41(b).

6 9. Extensions of time must be filed no later than the deadline sought to be
7 extended and must be accompanied by a showing of good cause.

8 10. A decision from the Ninth Circuit requires that pro se prisoner-plaintiffs
9 be given "notice of what is required of them in order to oppose" summary judgment motions
10 at the time of filing of the motions, rather than when the court orders service of process or
11 otherwise before the motions are filed. *Woods v. Carey*, 684 F.3d 934, 939–41 (9th Cir.
12 2012). **Defendant shall provide the following notice to plaintiff when he files and serves**
13 **any motion for summary judgment:**

14 The defendants have made a motion for summary judgment by which they seek
15 to have your case dismissed. A motion for summary judgment under Rule 56
of the Federal Rules of Civil Procedure will, if granted, end your case.

16 Rule 56 tells you what you must do in order to oppose a motion for summary
17 judgment. Generally, summary judgment must be granted when there is no
18 genuine issue of material fact — that is, if there is no real dispute about any
19 fact that would affect the result of your case, the party who asked for summary
20 judgment is entitled to judgment as a matter of law, which will end your case.
21 When a party you are suing makes a motion for summary judgment that is
22 properly supported by declarations (or other sworn testimony), you cannot
23 simply rely on what your complaint says. Instead, you must set out specific
24 facts in declarations, depositions, answers to interrogatories, or authenticated
documents, as provided in Rule 56(e), that contradict the facts shown in the
25 defendants' declarations and documents and show that there is a genuine issue
26 of material fact for trial. If you do not submit your own evidence in opposition,
27 summary judgment, if appropriate, may be entered against you. If summary
28 judgment is granted, your case will be dismissed and there will be no trial.

Rand v. Rowland, 154 F.3d 952, 962–63 (9th Cir. 1998).

IT IS SO ORDERED.

DATED: January 13, 2016


RICHARD SEEBORG
United States District Judge